Google Inc. et al v. Egger et al
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EXHIBIT A

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Date: August 2, 2007 7:36:05 AM PDT
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Subject: RE: NSA MDL-1791 - Spoliation Order Issue

Cindy -

I am responding to your email on behalf of the Government and carrier defendants. As I have indicated previously, where the Government has asserted privilege over whether or not the carriers' alleged involvement in the alleged intelligence activities can be confirmed or denied, and as to other allegations in the MDL complaints, it is not possible for the parties to have the kind of discussion that normally occurs concerning preservation issues. We do not believe it would be appropriate to rely on general understandings of what the law provides where there can be no confirmation of any allegation and no meeting of the minds as to how legal requirements may apply in these particular cases. For this reason, we do not believe the Government or carriers can state what they understand preservation obligations "to include" as you have requested, since that is among the issues that cannot be addressed between the parties. Rather than having more back and forth on this issue, we propose the following to address the matter:

1. Without confirming or denying any allegation or whether relevant documents exist, the Government is willing, without the need for any motion, to file with the court for its ex parte, in camera review, facts concerning the preservation of information that may be relevant in these lawsuits. That is, again without confirming or denying anything, we would provide the court with a record concering whether and, if so, what Government and carrier documents exist that may be relevant, if any, and how they are being preserved.

2. At that point, if plaintiffs believe it is necessary, they could file a memorandum stating their position on the legal requirements concerning preservation, which the Court could then consider in connection with the Government's classified submission, and the Government and carriers would reply if necessary.

I would like to work with you on a scheduling stipulation for such filings. As you know, we are quite busy this month and thus propose that the Government would file such a submission in September. If you still feel the need to file a motion at this time, I hope you would work with us on the schedule for that as well.

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